



July 12, 1999

Mr. Todd Blomerth
Blomerth And Payne
103 South Main Street
Lockhart, Texas 78644

OR99-1929

Dear Mr. Blomerth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125585.

The City of Lockhart (the "city") received requests for information relating to the recommendation for termination of employment of the requestor, a city police officer. You seek to withhold the responsive information under section 552.103 of the Government Code.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You indicate that the requestor is involved in grievance proceedings with the city in connection with his recommended termination and say that his exhausting this process is a prerequisite to his filing suit against the city under chapter 554 of the Government Code. *Id.* §554.006. Chapter 554, the “Whistleblower” law, provides that governmental bodies may not suspend, terminate, or discriminate against employees for reporting violations of law. *Id.* §§ 554.002. You note that the requestor has hired an attorney. You contend that various statements made by the requestor in connection with the grievance proceedings show that the city reasonably anticipates litigation in this matter such that the requested information may be withheld under section 552.103.

We disagree. You have, not in our opinion, shown that the city reasonably anticipates litigation in this matter such that the requested information may be withheld under section 552.103. *Compare* Open Records Decision Nos. 386 (1983), 336 (1982) (filing of EEOC complaint as basis of claim for withholding under the “litigation exception”); Open Records Decision No. 588 (1991) (contested case under the Administrative Procedure Act, Government Code chapter 2001, as litigation for purposes of the litigation exception).

Some of the responsive information, however, is confidential under section 552.130 of the Government Code, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The records at issue contain drivers license and license plate number information that are made confidential under section 552.130. We have marked the types of information the department must withhold pursuant to section 552.130.

Other information contained in the submitted records must be withheld under section 552.117 of the Government Code. That section makes confidential a peace officer’s home address, home telephone number, social security number, or information that reveals that the individual has family members.

Section 552.101 of the Government Code requires withholding information made confidential by constitutional or statutory law or by judicial decision. We have marked information which must be withheld under title 26 USC 6103(a), which makes confidential federal income tax filings.

The submitted information also contains criminal history record information ("CHRI") which is exempt from public disclosure pursuant to statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the kinds of CHRI which must be withheld under these provisions.

The submitted information also contains social security numbers. You must withhold any social security numbers that were obtained or maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C 405(c)(2)(C)(viii).

Section 552.101 also protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. An applicant's personal financial information may be excepted from required public disclosure under the privacy aspect of section 552.101. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills,

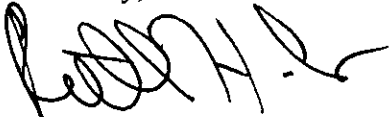
social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992); 545 (1990). In Open Records Decision No. 545, this office applied a similar presumption to personal financial information of public employees and held that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common-law privacy. Open Records Decision No. 545. We have marked what we believe is "personal financial information" in the submitted records which must be withheld under the common-law privacy aspect of section 552.101.

Except as noted above, you must release the submitted information. We note in particular that portions of the submitted information appear to be court records. Documents filed with a court are public by nature. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); *see also* Open Records Decision No. 287 (1981). Court records in the submitted information must be released in their entirety. We have marked examples of such court records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/WMW/ch

Ref.: ID# 125585

Encl. Marked documents

cc: Mr. Jeff McMillin
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(w/o enclosures)

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